Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1248

THE ILLINOIS STATE BOARD OF ELECTIONS,
Defendant-Appellant,

vs.

SOCIALIST WORKERS PARTY, ET AL.,
Plaintiffs-Appellees.

Consolidated with

THE ILLINOIS STATE BOARD OF ELECTIONS,
Intervening Defendant-Appellant,

vs.

GERALD ROSE, ET AL.,
Plaintiffs-Appellees,

CHICAGO BOARD OF ELECTION COMMISSIONERS, ET AL.,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION TO AFFIRM

THOMAS AQUINAS FORAN
FORAN, WISS AND SCHULTZ
30 North LaSalle Street
Suite 3010
Chicago, Illinois 60602
Telephone: 368-8330
Attorney for Chicago Board of Election Commissioners

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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INTRODUCTION

The Board of Election Commissioners of the City of Chicago (hereinafter called the "Board") was a defendant in these con-

solidated cases in the District Court. However, the Board did not appeal from the decision(s) of the District Court. This motion, therefore, is directed only to Argument II of the appellant's jurisdictional statement which relates to the conduct of the Board.

The Board, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves that the judgments of the United States Court of Appeals for the Seventh Circuit, and the District Court, be affirmed, as to the matters contained in appellant's Argument II, on the ground that the question is so insubstantial as not to warrant further argument.

ARGUMENT

Any Question of the Board's Authority to Agree to an Order "Solely as Applied" to the Special Election Concerned Is Moot.

In preface, what was involved here was not a General Election, whose time is fixed by statute, but the first known Special Mayoral Election in the City of Chicago's history (with a correspondingly very short time frame under statute). Thus, this was a rare, perhaps even *sui generis,* situation. At the District Court's behest, and with its conference participation, the Board agreed to an order *solely* for this special election, lowering the general statutory signature requirements from 25,000 to 20,000 signatures and extending the filing deadline by two weeks.

The State contends that the issue of the Board's action, is "still alive for future elections" and thus is not moot. (Appellant's Jurisdictional Statement, p. 13) The State is somewhat obtuse. It fails to appreciate that by the very terms of the order challenged, the order has no precedental value beyond the instant case and election. The order, recognizing the unique character of the instant case, is expressly limited solely to that single, special election. The order explicitly states that *"solely as applied* to the Special Mayoral Election to be held in Chicago on June 7, 1977" the statutory requirements will be as therein

stated. (See Board's App. 1) It was only on this non-precedental basis that the Board accepted this order. The issue, therefore, is clearly moot.

The cases cited by the State are irrelevant here. They all involved the validity of statutes which had continuing future effect. None of them concerned, as here, an order explicitly restricted to one election, and one election only. As the order here is restricted solely to just one election, the issue is not "capable of repetition, yet evading review." Or as the Court of Appeals for the Seventh Circuit here reasoned:

> "The order stated categorically that it applied only to the June 7, 1977 Special Mayoral Election which has long passed. Furthermore, this is not an issue which is 'capable of repetition, yet evading review.' *DeFunis* v. *Odegaard,* 416 U.S. 312, 318-19 (1974); *Roe* v. *Wade,* 410 U.S. 113, 125 (1973); *Southern Pacific Terminal Company* v. *Interstate Commerce Commission,* 219 U.S. 498, 515 (1911). We have no reason to believe that a future agreement by an election board to reduce signature requirements and extend filing deadlines in a special election situation, albeit an unlikely occurrence, would evade review. For this reason we dismiss the appeal of the March 17, 1977 order. Costs will be assessed against the appellants." (Appellant's App., p. 6a)

Moreover, the State should not complain about lack of authority, as earlier in this very same cause, it agreed to an identical type order extending the filing deadline for Independant candidates to April 4, 1977, even though the statute called for a February 19, 1977 filing deadline. (Board's App. 2, attached hereto; Ill. Rev. Stat. 46, Par. 10-3)

The State's suggestion that the Board violated equal protection rights of other political parties is ludicrous. The State is the one that maintains that the signature requirements for new political parties in Local elections must remain at 25,000 35,000 or even 58,000. Meanwhile, the Chicago Board agreed to lower the signature requirement here to 20,000 equally for *all*

new political parties and Independent candidates, one Board policy reason for this being, as was stated to the District Court:

> "I think we have some responsibility as an Election Authority to be neutral and to help people get on the ballot rather than to be obstructive. . . ." (Transcript of Proceedings, 2/11/78, p. 8)

It is the State Board of Elections, not the Chicago Board, which has been completely insensitive to the problems of new political parties throughout these proceedings. The Board's agreement to an order to *lower* the signature requirements equally for all new parties from 25,000 to 20,000, *thus making it easier for all new parties to gain ballot access,* clearly does not constitute a violation of the equal protection clause.

The Chicago Board strenuously agrees that statutory signature and filing deadline statutes are mandatory and can't be administratively altered. The present issue, however, was not one of law as to a statute on its face. It relates, rather, to the factual application of the signature and time filing statute to this unique special election. The validity of this statute, as so applied, is by nature a *factual* issue.

The State's assertion that the Board altered the statutory requirements thus is not an accurate characterization of what transpired below. First, it requires stating that the United States District Court, not the Board, lowered the signature requirements and extended the time filing requirements. (App. 1) The Board agreed to this District Court order, after a conference with the Court's participation, under the following circumstances: three days earlier, on March 14, 1977, the District Court had issued a 27 page opinion. In that opinion, the Court *inter alia* had strongly implied that, after an evidentiary hearing, it would further lower the signature requirements for this election from the 25,000 signature maximum it had already lowered it to without any evidentiary hearing and it would extend the filing deadline to April 18, 1977 (the day preceding the Special Mayoral Primary). (See, e.g., Appellant's App., pp. 23a, 26a

[FN 16], 28a, 32a) Further, and critically, the final sentence of the District Court's opinion then mandated a pretrial conference on March 17, 1977 to schedule a hearing and "to possibly reach a *stipulated agreement* for the regulations pertaining to the instant Mayoral Election". (Emphasis added) (Appellant's App., p. 32a) Further, in their pleadings, the U. S. Labor Party was requesting that the signature requirements for this election be lowered to 6,545 and the Socialist Workers Party was requesting automatic ballot access. The Board thus was faced with the specter, among other things, of an unmanageable "laundry list" ballot and the administrative and other evils attendant thereto. (See, e.g., *Lubin* v. *Panish,* 415 U. S. 709, 715-719; *American Party of Texas* v. *White,* 415 U. S. 767, 781-782)

In this case climate, the agreed order for one, was a recognition of reality by the Board which, nonetheless, still protected for this Special Mayoral Election the legitimate State interest against a "laundry list" ballot; assured that only new party or Independent candidates demonstrating significant voter support would attain the ballot; fulfilled the Board's administrative need to finally set the election calendar and the identity of candidates sufficiently before the election to allow election preparation; and avoided a time-consuming, costly, and probably less successful evidentiary hearing.

CONCLUSION

The Board respectfully submits that the appellant's Argument II presents no substantial question for the decision of this Court, and that the judgments below as to the matters contained in Argument II be affirmed.

Respectfully submitted,

IAN H. LEVIN
FORAN, WISS AND SCHULTZ
30 North LaSalle Street
Suite 3010
Chicago, Illinois 60602
Telephone: 368-8330
Attorney for Chicago Board of Election Commissioners

APPENDIX

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

GERALD ROSE, et al.,
Plaintiffs,
vs.
JOHN H. HANLY, et al.,
Defendants.
No. 77 C 326

ORDER

This matter coming on to be heard by the Court, the Court hereby finds and orders that solely as applied to the Special Mayoral Election to be held in Chicago on June 7, 1977 that:

(A) The number of signatures required to fulfill the five percent signature requirements of Ill. Rev. Stat., Ch. 46, Par. 10-2 to qualify for placement on the ballot as a new political party in the Special Mayoral Election shall be 20,000 signatures.

(B) The number of signatures required to fulfill the five percent signature requirements of Ill. Rev. Stat. Ch. 46, Par. 10-3 to qualify for placement on the ballot as an independent candidate in the Special Mayoral Election shall be 20,000 signatures.

(C) That the last date for filing either as a new political party or an independent candidate in the Special Mayoral Election shall be April 18, 1977.

ENTER:
/s/ BERNARD M. DECKER
Judge

Dated:

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

GERALD ROSE, et al.,
Plaintiffs,
vs.
JOHN H. HANLY, et al.,
Defendants.

No. 77 C 326

ORDER

The Chicago Board of Election Commissioners and the Illinois State Board of Elections having agreed, the Court hereby finds and orders that solely as applied to the Special Mayoral Election to be held in Chicago on June 7, 1977 that:

(A) The number of signatures required to fulfill the five percent signature requirements of Ill. Rev. Stat., Ch. 46, Par. 10-2 to qualify for placement on the ballot as a new political party in the Special Mayoral Election shall be 35,947 signatures.

(B) That the last date for filing as an independent candidate in the Special Mayoral Election, pursuant to Ill. Rev. Stat., Ch. 46, Par. 10-3, shall be April 4, 1977.

(C) This Order is without prejudice to the parties contesting any of the remaining issues in the case.

ENTER:

/s/ BERNARD M. DECKER
Judge

Dated: February 11, 1977